

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

ROBERT D. DURANT,)	
)	
Plaintiff,)	
)	
v.)	Case No. 04-0730-CV-W-NKL-SSA
)	
JO ANNE BARNHARD,)	
COMMISSIONER OF)	
SOCIAL SECURITY,)	
)	
Defendant.)	

ORDER

Pending before the Court is Defendant Commissioner's ("the Commissioner") Motion to Vacate [Doc. # 29] pursuant to Fed. R. Civ. P. 60(b). For the reasons set forth below, the Motion is granted.

On April 20, 2005, this Court reversed and remanded the Commissioner's decision to deny benefits to Plaintiff Durant ("Durant") [Doc. # 11]. Subsequently, Durant filed a motion for fees and expenses under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, seeking payment of \$3,586.00 in attorney's fees (Documents 13, 14 and 15). The Commissioner did not object so the Court granted Durant's motion on August 5, 2005 [Doc. # 17]. Shortly thereafter, Durant and his counsel were notified by the United States Department of Treasury that the entire amount of the EAJA award was being applied to a debt Durant owed to Missouri Child Support Enforcement. Durant then filed a second

motion for fees [Doc. # 19] on October 2, 2005, seeking payment directly to Durant's counsel. On November 28, 2005, over the Commissioner's objection [Doc. # 20], the Court vacated its August 5, 2005, Order and issued a new fee award to Durant as a representative payee, payable to Durant's counsel [Doc. # 24]. The Commissioner filed a timely notice of appeal. [Doc. # 26].

While the appeal was pending before the Eighth Circuit, the parties reached a successful settlement and dismissed the appeal on March 29, 2006. The settlement included payment to Durant in full satisfaction of the judgment for fees. The Commissioner has represented to the Court that she has taken action to request that the Office of Finance for Social Security Administration pay attorney's fees directly to Durant's counsel in accordance with that agreement. The agreement also provided that the Commissioner would file, without objection from Durant, a motion to vacate the Court's November 28, 2005, Order.

Federal Rule of Civil Procedure 60(b)(5) provides that the District Court may, on the motion of a party and on such terms as are just, grant relief from any judgment or order in the event that "the judgment has been satisfied, released, or discharged, . . . or it is no longer equitable that the judgment should have prospective application." As the Commissioner has settled her obligation on terms satisfactory to both parties, the Court finds the judgment has been satisfied. Accordingly, it is hereby

ORDERED that Defendant's Motion to Vacate [Doc. # 29] is GRANTED. The Court's November 28, 2005, Order [Doc. # 24] granting attorney's fees is VACATED.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: May 2, 2006
Jefferson City, Missouri